

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PACE LOCAL 1-1069,

PLAINTIFF

v.

SPINNAKER COATING—MAINE,

INC., ET AL.,

DEFENDANTS

CIVIL No. 01-236-P-H

ORDER ON PLAINTIFF'S MOTION TO REMAND

The plaintiff Union's motion to remand is **GRANTED** on the basis that the removal was untimely.

The original complaint was filed in state court on June 26, 2001. It pleaded three counts, based upon the anticipated refusal of the defendants to pay severance pay to their employees, as required by Maine statute, upon the projected closing of the defendants' plant on July 15, 2001. The plaintiff also requested an *ex parte* attachment on that date, but the attachment was denied. The defendants moved in state court to dismiss the complaint on July 6, 2001. On July 19, 2001, the plaintiff moved again for an *ex parte* attachment, which was granted. On July 27, 2001, the employees having now been terminated as anticipated, the plaintiff moved to amend its complaint in state court to reflect that event. On August 20, 2001, by agreement of the parties the state court denied the defendants' motion to dismiss and granted the plaintiff's motion to amend. The

state court also granted the second motion for attachment on that date. On August 29, 2001, the plaintiff filed a third motion for attachment, which was denied on August 30, 2001. The defendants removed the case to federal court on September 19, 2001.

Removal of a case from state to federal court must occur within thirty days of service of the initial pleadings. 28 U.S.C. § 1446(b). The parties agree that the defendant's removal here was timely *only* if the time is measured from allowance of the amended complaint rather than service of the original complaint. But if there is a federal issue in this case that permits removal (the parties disagree whether there is), it was present from the beginning, and the defendants do not argue that the amendment to the complaint introduced a federal issue for the first time. The defendants' only basis for supporting removal now is that the plaintiff's amendment so changed the nature of the complaint—the "substantial repleading exception"—as to justify treating it as a new complaint under the theory of Wilson v. Intercollegiate (Big Ten) Conference Athletic Ass'n, 668 F.2d 962 (7th Cir. 1982).

This case does not meet that standard, however it is articulated. Although the defendants argue that they had a good basis for dismissing the original complaint on the argument that there is no cause of action for an anticipated breach of the statutory responsibility to pay severance, the plaintiff's case was clear from the beginning—it was based upon the failure to pay severance benefits. Amendment of the complaint to reflect the fact that July 15 had come and gone, so that the complaint was no longer for an anticipated event, simply is not the sort of change that justifies late removal. The policies in support of early removal are

both to avoid federal courts intruding unduly in state court proceedings that have proceeded apace and to deprive defendants of an unfair tactical advantage of waiting to see how the state court is treating them before deciding whether to remove. Wilson, 668 F.2d at 965. Here, the defendants were on full notice about the scope of the plaintiff's claims from the time of the original complaint, and could have removed initially. They chose not to. After the passage of several months and several motions that have occupied the state court's time and attention, it is simply too late now.

So ORDERED.

DATED THIS 31ST DAY OF OCTOBER, 2001.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket For Case #: 01-CV-236

PACE LOCAL 1-1069
plaintiff

JONATHAN S. R. BEAL, ESQ.
FONTAINE & BEAL, P.A.
P.O. BOX 7590
PORTLAND, ME 04112
(207) 879-1879

v.

SPINNAKER COATING INC.
defendant

WILLIAM C. KNOWLES, ESQ.
ROBERT C. BROOKS, ESQ.
VERRILL & DANA
P.O. BOX 586
PORTLAND, ME 04112
(207) 774-4000

SPINNAKER COATING—MAINE INC.
dba
SPINNAKER COATING
defendant

WILLIAM C. KNOWLES, ESQ.
ROBERT C. BROOKS, ESQ.
(See above)

SPINNAKER INDUSTRIES INC.
defendant

WILLIAM C. KNOWLES, ESQ.
ROBERT C. BROOKS, ESQ.
(See above)

LYNCH MANUFACTURING
CORPORATION
defendant

WILLIAM C. KNOWLES, ESQ.
ROBERT C. BROOKS, ESQ.
(See above)

LYNCH CORPORATION
defendant

WILLIAM C. KNOWLES, ESQ.
ROBERT C. BROOKS, ESQ.
(See above)